LSK&D #: 255-1318 /
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
---x
ADEL REZNIK,

Plaintiff,

-against-

MACY'S, INC., JOHN DOES security officers employed by the defendants MACY'S, INC. the identity and number of whom is presently unknown),

Defendants.
---x

Docket No.: CV 12-5719 (JBW) (RLM)

ANSWER TO FIRST AMENDED COMPLAINT

Defendant, MACY'S, INC. by its attorneys, LESTER SCHWAB KATZ & DWYER, LLP, answering plaintiff's First Amended Complaint, dated February 26, 2013 respectfully states as follows:

ANSWERING INTRODUCTION

1. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "1" of the First Amended Complaint.

2. Denies each and every allegation contained in paragraph "2" of the First Amended Complaint.

3. Denies each and every allegation contained in second paragraph "1" of the First Amended Complaint.

ANSWERING JURISDICTION

4. Denies each and every allegation contained in paragraph "2" of the First Amended Complaint, but begs leave to refer all questions of law to the Court at the trial of this action.

ANSWERING PARTIES

5. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "3" of the First Amended Complaint.

6. Admits the allegations contained in paragraph "4" of the First Amended Complaint.

7. Admits the allegations contained in paragraph "5" of the First Amended Complaint.

8. Admits the allegations contained in paragraph "6" of the First Amended Complaint.

9. Denies each and every allegation contained in paragraph "7" of the First Amended Complaint, but begs leave to refer all questions of law to the Court at the trial of this action.

10. Denies each and every allegation contained in paragraph "8" of the First Amended Complaint, but begs leave to refer all questions of law to the Court at the trial of this action.

11. Denies each and every allegation contained in paragraph "9" of the First Amended Complaint.

12. Denies each and every allegation contained in paragraph "10" of the First Amended Complaint.

13. Denies each and every allegation contained in paragraph "11" of the First Amended Complaint.

14. Denies each and every allegation contained in paragraph "12" of the First Amended Complaint.

FACTUAL ALLEGATIONS

15. Repeats and reiterates each and every denial hereinbefore made with the same force and effect as though the same were set forth at length herein in answer to paragraph number "13" of the First Amended Complaint.

16. Denies each and every allegation contained in paragraph "14" of the First Amended Complaint.

17. Denies each and every allegation contained in paragraph "15" of the First Amended Complaint.

18. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "16" of the First Amended Complaint.

19. Denies each and every allegation contained in paragraph "17" of the First Amended Complaint.

20. Denies each and every allegation contained in paragraph "18" of the First Amended Complaint.

21. Denies each and every allegation contained in paragraph "19" of the First Amended Complaint.

22. Denies each and every allegation contained in paragraph "20" of the First Amended Complaint.

23. Denies each and every allegation contained in paragraph "21" of the First Amended Complaint.

24. Denies each and every allegation contained in paragraph "22" of the First Amended Complaint.

25. Denies each and every allegation contained in paragraph "23" of the First Amended Complaint.

26. Denies each and every allegation contained in paragraph "24" of the First Amended Complaint.

27. Denies each and every allegation contained in paragraph "25" of the First Amended Complaint.

28. Denies each and every allegation contained in paragraph "26" of the First Amended Complaint.

29. Denies each and every allegation contained in paragraph "27" of the First Amended Complaint.

30. Denies each and every allegation contained in paragraph "28" of the First Amended Complaint.

31. Denies each and every allegation contained in paragraph "29" of the First Amended Complaint.

32. Denies each and every allegation contained in paragraph "30" of the First Amended Complaint.

33. Denies each and every allegation contained in paragraph "31" of the First Amended Complaint.

34. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "32" of the First Amended Complaint.

35. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "33" of the First Amended Complaint.

36. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "34" of the First Amended Complaint.

37. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "35" of the First Amended Complaint.

38. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "36" of the First Amended Complaint.

ANSWERING A FIRST SEPARATE AND DISTINCT CAUSE OF ACTION AGAINST DEFENDANTS: (FALSE ARREST)

39. Repeats and reiterates each and every denial hereinbefore made with the same force and effect as though the same were set forth at length herein in answer to paragraph number "37" of the First Amended Complaint.

40. Denies each and every allegation contained in paragraph "38" of the First Amended Complaint.

41. Denies each and every allegation contained in paragraph "39" of the First Amended Complaint.

ANSWERING A SECOND SEPARATE AND DISTINCT CAUSE OF ACTION AGAINST DEFENDANTS: (UNLAWFUL IMPRISONMENT)

42. Repeats and reiterates each and every denial hereinbefore made with the same force and effect as though the same were set forth at length herein in answer to paragraph number "40" of the First Amended Complaint.

43. Denies each and every allegation contained in paragraph "41" of the First Amended Complaint.

44. Denies each and every allegation contained in paragraph "42" of the Complaint.

ANSWERING A THIRD SEPARATE AND DISTINCT CAUSE OF ACTION AGAINST DEFENDANTS: (MALICIOUS PROSECUTION)

45. Repeats and reiterates each and every denial hereinbefore made with the same force and effect as though the same were set forth at length herein in answer to paragraph number "43" of the First Amended Complaint.

46. Denies each and every allegation contained in paragraph "44" of the First Amended Complaint.

47. Denies each and every allegation contained in paragraph "45" of the First Amended Complaint.

ANSWERING A FOURTH SEPARATE AND DISTINCT CAUSE OF ACTION AGAINST DEFENDANTS: (ASSAULT AND BATTERY)

48. Repeats and reiterates each and every denial hereinbefore made with the same force and effect as though the same were set forth at length herein in answer to paragraph number "46" of the First Amended Complaint.

49. Denies each and every allegation contained in paragraph "47 of the First Amended Complaint.

50. Denies each and every allegation contained in paragraph "48" of the First Amended Complaint.

51. Denies each and every allegation contained in paragraph "49" of the First Amended Complaint.

52. Denies each and every allegation contained in paragraph "50" of the First Amended Complaint.

ANSWERING A FIFTH SEPARATE AND DISTINCT CAUSE OF ACTION AGAINST DEFENDANTS: (INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS)

53. Repeats and reiterates each and every denial hereinbefore made with the same force and effect as though the same were set forth at length herein in answer to paragraph number "51" of the First Amended Complaint.

54. Denies each and every allegation contained in paragraph "52" of the First Amended Complaint.

55. Denies each and every allegation contained in paragraph "53" of the First Amended Complaint.

56. Denies each and every allegation contained in paragraph "54" of the First Amended Complaint.

57. Denies each and every allegation contained in paragraph "55" of the First Amended Complaint.

58. Denies each and every allegation contained in paragraph "56" of the First Amended Complaint.

ANSWERING A SIXTH SEPARATE AND DISTINCT CAUSE OF ACTION AGAINST DEFENDANTS: (NEGLIGENT HIRING TRAINING, SUPERVISING, AND RETAINING)

59. Repeats and reiterates each and every denial hereinbefore made with the same force and effect as though the same were set forth at length herein in answer to paragraph number "57" of the First Amended Complaint.

60. Denies each and every allegation contained in paragraph "58" of the First Amended Complaint.

61. Denies each and every allegation contained in paragraph "59" of the First Amended Complaint.

62. Denies each and every allegation contained in paragraph "60" of the First Amended Complaint.

63. Denies each and every allegation contained in paragraph "61" of the First Amended Complaint.

64. Denies each and every allegation contained in paragraph "62" of the First Amended Complaint.

65. Denies each and every allegation contained in paragraph "63" of the First Amended Complaint.

66. Denies each and every allegation contained in paragraph "64" of the First Amended Complaint.

ANSWERING A SEVENTH SEPARATE AND DISTINCT CAUSE OF ACTION AGAINST DEFENDANTS: (PRIMA FACIE TORT)

67. Repeats and reiterates each and every denial hereinbefore made with the same force and effect as though the same were set forth at length herein in answer to paragraph number "65" of the First Amended Complaint.

68. Denies each and every allegation contained in paragraph "66" of the First Amended Complaint.

69. Denies each and every allegation contained in paragraph "67" of the First Amended Complaint.

ANSWERING AN EIGHTH SEPARATE AND DISTINCT CAUSE OF ACTION AGAINST DEFENDANTS: (NEGLIGENCE)

70. Repeats and reiterates each and every denial hereinbefore made with the same force and effect as though the same were set forth at length herein in answer to paragraph number "68" of the First Amended Complaint.

71. Denies each and every allegation contained in paragraph "69" of the First Amended Complaint.

72. Denies each and every allegation contained in paragraph "70" of the First Amended Complaint.

ANSWERING A NINTH SEPARATE AND DISTINCT CAUSE OF ACTION AGAINST DEFENDANTS: PENDENT CLAIM (RESPONDEAT SUPERIOR)

73. Repeats and reiterates each and every denial hereinbefore made with the same force and effect as though the same were set forth at length herein in answer to paragraph number "71" of the First Amended Complaint.

74. Denies each and every allegation contained in paragraph "72" of the First Amended Complaint.

75. Denies each and every allegation contained in paragraph "73" of the First Amended Complaint.

ANSWERING A TENTH SEPARATE AND DISTINCT CAUSE OF ACTION AGAINST DEFENDANTS: (PUNITIVE DAMAGES)

76. Repeats and reiterates each and every denial hereinbefore made with the same force and effect as though the same were set forth at length herein in answer to paragraph number "74" of the First Amended Complaint.

77. Denies each and every allegation contained in paragraph "75" of the First Amended Complaint.

AS AND FOR A FIRST SEPARATE DEFENSE

78. That any injuries and/or damages sustained by the plaintiff, as alleged in the Complaint herein, were caused in whole or in part by the contributory negligence and/or culpable conduct of each plaintiff and not as a result of any contributory negligence and/or culpable conduct on the part of this answering defendant.

AS AND FOR A SECOND SEPARATE DEFENSE

79. That by entering into the activity in which each plaintiff was engaged at the time of the occurrence set forth in the Verified Complaint, each plaintiff knew the hazards thereof and the inherent risks incident thereto and had full knowledge of the dangers thereof; that whatever injuries and damages were sustained by the plaintiff herein as alleged in the Verified Complaint arose from and were caused by reason of such risks voluntarily undertaken by plaintiff in their activities and such risks were assumed and accepted by them in performing and engaging in said activities.

AS AND FOR A THIRD SEPARATE DEFENSE

80. The liability of this defendant, if any, to the plaintiff for non-economic loss is limited to its equitable share, determined in accordance with the relative culpability of all persons or entities contributing to the total liability for non-economic loss, including named parties and others over whom plaintiff could have obtained personal jurisdiction with due diligence.

AS AND FOR A FOURTH SEPARATE DEFENSE

81. In the event plaintiff recovers a verdict or judgment against this defendant, then said verdict or judgment must be reduced pursuant to CPLR 4545(c) by those amounts which have been, or will, with reasonable certainty, replace or indemnify plaintiff, in whole or in part, for any past or future claimed economic loss, from any collateral source such as insurance, social security, workers' compensation or employee benefit programs.

AS AND FOR A FIFTH SEPARATE DEFENSE

82. The amount of punitive damages sought is unconstitutionally excessive, and disproportionate to Defendant's conduct under the United States Constitution, and thus violates the Due Process Clause of the Fourteenth Amendment, U.S. Const. amend. XIV, Section 1, and the Due Process Clauses of the New York State Constitution, Article I, Section 6.

83. Any award of punitive damages based upon vague and undefined standards of liability, would violate the Due Process Clause of the Fourteenth Amendment, U.S. Const. amend. XIV, Section 1, and the Due Process Clause of the New York State Constitution, Article I, Section 6.

84. Any award of punitive damages based upon any standard of proof less than "clear and convincing" evidence would violate the Due Process Clause of the Fourteenth Amendment of the United States Constitution, and the Due Process Clause of the New York State Constitution, Article I, Section 6.

85. Any award of punitive damages resulting from the same course of conduct for which Defendant has been or may be found liable for punitive damages in

another action violates the Due Process Clause of the Fourteenth Amendment of the United States Constitution, and the Due Process Clause of the New York State Constitution, Article I, Section 6.

86. Any award of punitive damages must be proportionate to the underlying compensatory damage award. See State Farm Mutual Automobile Insurance Co. v. Campbell, et al., (S.Ct. 2003).

AS AND FOR A SIXTH SEPARATE DEFENSE

87. Pursuant to the General Business Law §218, plaintiff's First Amended Complaint is barred since plaintiff was detained in a reasonable manner and for not more than the reasonable time to permit investigation and questioning by this defendant, and since defendant had reasonable grounds to believe that plaintiff was committing or attempting to commit larceny of merchandise on the premises.

AS AND FOR A SEVENTH SEPARATE DEFENSE

88. That if the plaintiff sustained the injuries complained of in the manner alleged, said injuries were caused by the negligence of parties over whom the answering defendant was not obligated to exercise supervision or control.

AS AND FOR AN EIGHTH SEPARATE DEFENSE

89. That one or more of the causes of action are time barred pursuant to the applicable Statute of Limitations.

WHEREFORE, this answering defendant demands judgment dismissing the First Amended Complaint, together with the attorneys' fees, costs and disbursements of this action.

Dated: New York, New York
March 5, 2013

Respectfully submitted,

LESTER SCHWAB KATZ & DWYER, LLP

Robert N. Dunn (RND-9193)
Attorneys for Defendant
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120 Broadway
New York, New York 10271
(212) 964-6611

TO:

Alexander Roytblat, Esq.
ROYTBLAT & ASSOCIATES, PC
245 W. 17th Street, 5th Floor
New York, NY 10011
Attorneys for Plaintiff
(718) 709-7159

Declaration of Service

I served the annexed **ANSWER TO FIRST AMENDED COMPLAINT** by **ECF** and first-class mail on the following persons on March 5, 2013:

Alexander Roytblat, Esq.
ROYTBLAT & ASSOCIATES, PC
245 W. 17th Street, 5th Floor
New York, NY 10011
Attorneys for Plaintiff
(718) 709-7159

I declare under penalty of perjury that the foregoing is true and correct. Executed on March 5, 2013.

MARY E. MAGEE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

---x

ADEL REZNIK,

Plaintiff,

-against-

MACY'S, INC., JOHN DOES security officers employed by the defendants MACY'S, INC. the identity and number of whom is presently unknown),

Defendants.

---x

Docket No.: CV 12-5719 (JBW) (RLM)

ANSWER TO FIRST AMENDED COMPLAINT

LESTER SCHWAB KATZ & DWYER, LLP

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